

REMARKS

Amendments

Applicant has amended the Specification to update the status of U.S. Patent Application Ser. No. 09/910,190 from which the subject application claims priority. Applicant draws to the Examiner's attention the determination of allowability and the file history of that case, including all cited references.

Claims 35 and 37 have been amended. No new matter has been added. Claims 1-37 remain pending. In view of the following remarks, reconsideration of the application is respectfully requested.

37 C.F.R. § 1.131 Declaration

Applicant has filed simultaneously herewith a Declaration of Prior Invention under 37 C.F.R. § 1.131 proving applicant's date of invention predates the earliest filing date of US Patent Application 2001/0041991 (Segel), US Patent Application 2001/0049614 (Rice), and US Patent Application 2001/0032100 (Mahmud). Accordingly, Segel, Rice, and Mahmud cannot be used as prior art against the claims of this application under 35 U.S.C. § 103.

35 U.S.C. § 101 - Claims 35-37

Applicant requests reconsideration of the rejection of claims 35-37 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. As amended claims 35 and 37 require a machine readable memory. Claim 35 further requires using a computing machine to perform steps. Accordingly, the claims recite statutory subject matter and Applicant requests the Section 101 rejection be withdrawn.

35 U.S.C. § 112, Second Paragraph - Claims 35 and 36

Applicant requests reconsideration of the rejection of claims 35 and 36 under 35 U.S.C. § 112, second paragraph, as being indefinite. Claim 35 has been amended to specify that eligibility is determined using a pre-determined criterion of eligibility. Thus,

each specified reason for rejecting the claim has been addressed and overcome. Accordingly, Applicant requests the Section 112 rejection be withdrawn.

35 U.S.C. § 103 - Claims 1-4, 8-11, 15-27, and 29-34

Applicant requests reconsideration of the rejection of claims 1-4, 8-11, 15-27, and 29-34 under 35 U.S.C. § 103(a) as being unpatentable over Segel in view of US Patent 5,772,585 (Lavin). The Declaration of Prior Invention filed with this amendment proves applicant's date of invention predates the earliest filing date of Segel. Accordingly, Segel cannot be used as prior art against claims 1-4, 8-11, 15-27, and 29-34 under 35 U.S.C. § 103(a). Applicant is not opining as to the teachings of Segel because such an opinion would be superfluous as the reference cannot be used as prior art against the claims of the present application. Omitting a direct response to the Examiner's interpretations of the teachings disclosed in Segel should not be inferred to mean Applicant concurs with the Examiner's opinions or interpretations. In view of the foregoing, applicant respectfully requests withdrawal of the rejections of claims 1-4, 8-11, 15-27, and 29-34 as being obvious over Segel in view of Lavin.

35 U.S.C. § 103 - Claims 5-7, 12-14, and 28

Applicant requests reconsideration of the rejection of claims 5-7, 12-14, and 28 under 35 U.S.C. § 103(a) as being unpatentable over Segel in view of Lavin and further in view of Rice. The Declaration of Prior Invention filed with this amendment proves applicant's date of invention predates the earliest filing dates of Segel and Rice. Accordingly, Segel and Rice cannot be used as prior art against claims 5-7, 12-14, and 28 under 35 U.S.C. § 103(a). Applicant is not opining as to the teachings of Segel or Rice because such an opinion would be superfluous as the references cannot be used as prior art against the claims of the present application. Omitting a direct response to the Examiner's interpretations of the teachings disclosed in Segel and Rice should not be inferred to mean Applicant concurs with the Examiner's opinions or interpretations. In view of the foregoing, applicant respectfully requests withdrawal of the rejections of claims 5-7, 12-14, and 28 as being obvious over Segel in view of Lavin and further in view of Rice.

35 U.S.C. § 103 - Claims 35-37

Applicant requests reconsideration of the rejection of claims 35-37 under 35 U.S.C. § 103(a) as being unpatentable over Segel in view of Mahmud. The Declaration of Prior Invention filed with this amendment proves applicant's date of invention predates the earliest filing dates of Segel and Mahmud. Accordingly, Segel and Mahmud cannot be used as prior art against claims 35-37 under 35 U.S.C. § 103(a). Applicant is not opining as to the teachings of Segel or Mahmud because such an opinion would be superfluous as the references cannot be used as prior art against the claims of the present application. Omitting a direct response to the Examiner's interpretations of the teachings disclosed in Segel and Mahmud should not be inferred to mean Applicant concurs with the Examiner's opinions or interpretations. In view of the foregoing, applicant respectfully requests withdrawal of the rejections of claims 35-37 as being obvious over Segel in view of Mahmud.

Conclusion

The claims are allowable for at least the reasons set forth herein. Applicants request that claims 1-37 be allowed.

Although the prior art made of record and not relied upon may be considered pertinent to the disclosure, none of these references anticipate or make obvious the recited invention. The fact that Applicants may not have specifically traversed any particular assertion by the Office should not be construed as indicating agreement therewith.

Applicant wishes to expedite prosecution of this application. If the Examiner deems the application not to be in condition for allowance, the Examiner is invited and encouraged to telephone the undersigned to discuss allowance.

The Commissioner is hereby authorized to charge any deficiency or credit any overpayment of any required fee during the entire pendency of this application to Deposit Account No. 19-1345.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David E. Crawford, Jr.", is written over the typed name and firm name.

David E. Crawford, Jr., Reg. No. 38,118
SENNIGER POWERS LLP
100 North Broadway, 17th Floor
St. Louis, Missouri 63102
(314) 231-5400